

Effective 5/4/2022

Chapter 41
Prohibition on Retail Facility Incentive Payments Act

11-41-101 Title.

This chapter is known as the "Prohibition on Sales and Use Tax Incentive Payments Act."

Enacted by Chapter 283, 2004 General Session

11-41-102 Definitions.

As used in this chapter:

- (1) "Agreement" means an oral or written agreement between a public entity and a person.
- (2) "Business entity" means a sole proprietorship, partnership, limited partnership, limited liability company, corporation, or other entity or association used to carry on a business for profit.
- (3) "Determination of violation" means a determination by the Governor's Office of Economic Opportunity of substantial likelihood that a retail facility incentive payment has been made in violation of Section 11-41-103, in accordance with Section 11-41-104.
- (4) "Environmental mitigation" means an action or activity intended to remedy known negative impacts to the environment.
- (5) "Executive director" means the executive director of the Governor's Office of Economic Opportunity.
- (6) "General plan" means the same as that term is defined in Section 23A-6-101.
- (7) "Mixed-use development" means development with mixed land uses, including housing.
- (8) "Moderate income housing plan" means the moderate income housing plan element of a general plan.
- (9) "Office" means the Governor's Office of Economic Opportunity.
- (10) "Political subdivision" means any county, city, town, metro township, school district, special district, special service district, community reinvestment agency, or entity created by an interlocal agreement adopted under Title 11, Chapter 13, Interlocal Cooperation Act.
- (11) "Public entity" means:
 - (a) a political subdivision;
 - (b) a state agency as defined in Section 63J-1-220;
 - (c) a higher education institution as defined in Section 53B-1-201;
 - (d) the Military Installation Development Authority created in Section 63H-1-201;
 - (e) the Utah Inland Port Authority created in Section 11-58-201; or
 - (f) the Point of the Mountain State Land Authority created in Section 11-59-201.
- (12) "Public funds" means any money received by a public entity that is derived from:
 - (a) a sales and use tax authorized under Title 59, Chapter 12, Sales and Use Tax Act; or
 - (b) a property tax levy.
- (13) "Public infrastructure" means:
 - (a) a public facility as defined in Section 11-36a-102; or
 - (b) public infrastructure included as part of an infrastructure master plan related to a general plan.
- (14) "Retail facility" means any facility operated by a business entity for the primary purpose of making retail transactions.
- (15)
 - (a) "Retail facility incentive payment" means a payment of public funds:
 - (i) to a person by a public entity;

- (ii) for the development, construction, renovation, or operation of a retail facility within an area of the state; and
- (iii) in the form of:
 - (A) a payment;
 - (B) a rebate;
 - (C) a refund;
 - (D) a subsidy; or
 - (E) any other similar incentive, award, or offset.
- (b) "Retail facility incentive payment" does not include a payment of public funds for:
 - (i) the development, construction, renovation, or operation of:
 - (A) public infrastructure; or
 - (B) a structured parking facility;
 - (ii) the demolition of an existing facility;
 - (iii) assistance under a state or local:
 - (A) main street program; or
 - (B) historic preservation program;
 - (iv) environmental mitigation or sanitation, if determined by a state or federal agency under applicable state or federal law;
 - (v) assistance under a water conservation program or energy efficiency program, if any business entity located within the public entity's boundaries or subject to the public entity's jurisdiction is eligible to participate in the program;
 - (vi) emergency aid or assistance, if any business entity located within the public entity's boundaries or subject to the public entity's jurisdiction is eligible to receive the emergency aid or assistance; or
 - (vii) assistance under a public safety or security program, if any business entity located within the public entity's boundaries or subject to the public entity's jurisdiction is eligible to participate in the program.
- (16) "Retail transaction" means any transaction subject to a sales and use tax under Title 59, Chapter 12, Sales and Use Tax Act.
- (17)
 - (a) "Small business" means a business entity that:
 - (i) has fewer than 30 full-time equivalent employees; and
 - (ii) maintains the business entity's principal office in the state.
 - (b) "Small business" does not include:
 - (i) a franchisee, as defined in 16 C.F.R. Sec. 436.1;
 - (ii) a dealer, as defined in Section 41-1a-102; or
 - (iii) a subsidiary or affiliate of another business entity that is not a small business.

Amended by Chapter 16, 2023 General Session
Amended by Chapter 34, 2023 General Session

11-41-103 Prohibition on retail facility incentive payments -- Exceptions.

- (1) Except as provided in Subsection (2), a public entity may not:
 - (a) make a retail facility incentive payment under an agreement that is initiated or entered into on or after July 1, 2022; or
 - (b) initiate or enter into an agreement on or after July 1, 2022, to make a retail facility incentive payment.
- (2) Notwithstanding Subsection (1), a public entity may make a retail facility incentive payment for:

- (a) a retail facility located entirely within a census tract in which more than 51% of residents have a household income at or below 70% of the county area median income;
 - (b) a retail facility included as part of a mixed-use development in which:
 - (i) the development includes at least one housing unit for every 1,250 square feet of retail space within the development; and
 - (ii) at least 10% of the new or proposed housing units within the development qualify as moderate income housing, in accordance with the moderate income housing plan of the municipality or county in which the development is located;
 - (c) a retail facility included as part of a development in which:
 - (i) the retail facility has a gross sales floor area of no more than 20,000 square feet; and
 - (ii) no other retail facility with a gross sales floor area of more than 20,000 square feet is located within the same development;
 - (d) a retail facility located within a county of the fourth, fifth, or sixth class;
 - (e) a retail facility for a small business;
 - (f) a retail facility for a Utah-based nonprofit arts or cultural organization; or
 - (g) a retail facility for a ski resort that:
 - (i) has been in operation for at least 40 years; and
 - (ii) provides at least 1,000 acres for skiing.
- (3) A person who receives public funds for a mixed-use development in accordance with Subsection (2)(b) may not use the public funds for the development, construction, renovation, or operation of housing units within the mixed-use development unless the housing units qualify as moderate income housing in accordance with the moderate income housing plan of the municipality or county in which the development is located.
- (4)
- (a) For each fiscal year that a public entity makes a retail facility incentive payment described in Subsections (2)(a) through (c), the public entity shall submit a written report to the office in accordance with Subsection 11-41-104(1).
 - (b) For each fiscal year that a public entity makes a retail facility incentive payment described in Subsections (2)(d) through (g), the public entity shall submit a notification to the office in accordance with Subsection 11-41-104(2).

Amended by Chapter 307, 2022 General Session

11-41-104 Reporting and notification requirements -- Notice to state auditor.

- (1)
- (a) For a fiscal year beginning on or after July 1, 2022, a public entity that makes a retail facility incentive payment described in Subsections 11-41-103(2)(a) through (c) shall submit a written report to the office on or before June 30 of the fiscal year in which the retail facility incentive payment is made.
 - (b) The report under Subsection (1)(a) shall:
 - (i) provide a description of each retail facility incentive payment under Subsections 11-41-103(2)(a) through (c) that the public entity made during the fiscal year, including:
 - (A) the type of retail facility incentive payment;
 - (B) the date on which the retail facility incentive payment was made; and
 - (C) identification of the recipient of the retail facility incentive payment;
 - (ii) include any other information requested by the office; and
 - (iii) be in a form prescribed by the office.
- (2)

- (a) For a fiscal year beginning on or after July 1, 2022, a public entity that makes a retail facility incentive payment described in Subsections 11-41-103(2)(d) through (g) shall submit a notification to the office on or before June 30 of the fiscal year in which the retail facility incentive payment is made.
- (b) The notification under Subsection (2)(a) shall:
 - (i) list each retail facility incentive payment under Subsections 11-41-103(2)(d) through (g) that the public entity made during the fiscal year, including the date on which the retail facility incentive payment was made;
 - (ii) include any other information requested by the office; and
 - (iii) be in a form prescribed by the office.
- (3) Upon the receipt of a report from a public entity under Subsection (1), the office shall review the report to determine whether each retail facility incentive payment described in the report is in compliance with Section 11-41-103.
- (4) After reviewing a public entity's report under Subsection (3), the office shall send a written notice to the public entity if the office determines there is a substantial likelihood that the public entity made a retail facility incentive payment in violation of Section 11-41-103.
- (5) The notice under Subsection (4) shall include:
 - (a) a statement that describes in reasonable detail how the office made a determination of violation;
 - (b) an explanation of the public entity's right to appeal the determination of violation in accordance with Subsection (6); and
 - (c) a statement that the office may send notice of the determination of violation to the state auditor in accordance with Subsection (7) if:
 - (i)
 - (A) the public entity does not appeal the determination of violation in accordance with Subsection (6); and
 - (B) the office determines that the public entity has failed to make efforts to recover or recoup the amount of public funds lost to the state as a result of the violation within 90 days after the day on which the notice is sent; or
 - (ii)
 - (A) the determination of violation is upheld on appeal in accordance with Subsection (6); and
 - (B) the office determines that the public entity has failed to make efforts to recover or recoup the amount of public funds lost to the state as a result of the violation within 90 days after the day on which the determination of violation is upheld.
- (6)
 - (a) The public entity may appeal the determination of violation by sending a written notice to the office within 30 days after the day on which the notice described in Subsection (5) is sent.
 - (b) The notice under Subsection (6)(a) shall include a statement that describes in reasonable detail each objection to the determination of violation.
 - (c) The executive director shall:
 - (i) within 90 days after the day on which the office receives notice under Subsection (6)(a), hold a meeting with representatives of the public entity at which the public entity's objections to the determination of violation are discussed; and
 - (ii) within 30 days after the day on which the meeting under Subsection (6)(c)(i) is held:
 - (A) issue a written decision that upholds or rescinds the determination of violation; and
 - (B) send a copy of the written decision to the public entity.
 - (d) An appeal under this Subsection (6) is not subject to Title 63G, Chapter 4, Administrative Procedures Act.

- (7)
- (a) Beginning July 1, 2024, the office may send a written notice to the state auditor if the office determines that:
 - (i) Subsection (5)(c)(i) or (ii) applies to a public entity; or
 - (ii) a public entity failed to submit the report described in Subsection (1).
 - (b) The notice under Subsection (7)(a) shall include:
 - (i) a description of the office's grounds for sending notice;
 - (ii) a copy of the report submitted to the office under Subsection (1), if applicable; and
 - (iii) any other information required by the state auditor for purposes of initiating an audit or investigation in accordance with Section 67-3-1.
- (8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules to implement this section.

Enacted by Chapter 307, 2022 General Session